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IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE  
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

STATE OF TENNESSEE, *ex rel.*  
ROBERT E. COOPER, JR.,  
ATTORNEY GENERAL and REPORTER,

Plaintiff,

v.

TOYOTA MOTOR CORPORATION;  
TOYOTA MOTOR NORTH  
AMERICA, INC.;  
TOYOTA MOTOR SALES, U.S.A., INC.; and  
TOYOTA MOTOR ENGINEERING  
& MANUFACTURING NORTH AMERICA,  
INC.,

Defendants.

Hon.

Case No. 184671-2

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

1. Plaintiff, THE STATE OF TENNESSEE, by and through Robert E. Cooper, Jr., Attorney General of the State of Tennessee, at the request of Gary Cordell, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance brings this action against Defendants Toyota Motor Corporation, Toyota Motor North America, Inc., Toyota Motor Sales USA, Inc., Toyota Motor Engineering & Manufacturing, North America Inc. (hereinafter collectively referred to as "Defendants" or "Toyota") for violating the Tennessee Consumer Protection Act ("TCPA"), Tenn. Code Ann. §§ 47-18-101 *et seq.* Upon information and belief, the State of Tennessee alleges as follows:

**JURISDICTION AND VENUE**

2. This action is brought on behalf of THE STATE OF TENNESSEE, by Robert E. Cooper, Jr., Attorney General of the State of Tennessee, pursuant to Tenn. Code Ann. § 47-18-108(a)(1).

3. This Court has jurisdiction over the Defendants pursuant to Tenn. Code Ann. §§ 47-18-108 and 47-18-114 because Defendants have transacted business within the State of Tennessee or have engaged in conduct impacting Tennessee at all times relevant to this complaint.

4. Venue for this action properly lies in Knox County, Tennessee, pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because Defendants transact business in Knox County, Tennessee.

5. Defendants agreed to waive notice as required by Tenn. Code Ann. § 47-18-108(a)(2).

### **PARTIES**

6. Plaintiff, THE STATE OF TENNESSEE (hereinafter “the State”), by Robert E. Cooper, Jr., Attorney General of the State of Tennessee, is charged, inter alia, with the enforcement of the TCPA, Tenn. Code Ann. § 47-18-101 *et seq.*

7. Defendants are Toyota Motor Corporation (hereinafter “TMC”), Toyota Motor North America, Inc. (hereinafter “TMA”), Toyota Motor Sales USA, Inc. (hereinafter “TMS”), and Toyota Motor Engineering & Manufacturing North America Inc. (hereinafter “TEMA”).

8. Defendants are composed of numerous subsidiaries, some of which are based in the United States. However, Defendants’ principal corporate offices are located at 1 Toyota-cho, Toyota City, Aichi Prefecture 471-8571, Japan. Toyota transacts business in Tennessee and nationwide by manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

### **COMMERCE**

9. Subsection 47-18-103(19) of the TCPA, defines “trade or commerce” as “the advertising, offering for sale, lease or rental, or distribution of any goods, services, or property , tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated.” Tenn. Code Ann. § 47-18-103(19).

10. Defendants were at all times relative hereto, engaged in trade or commerce in the State of Tennessee, to wit: manufacturing, assembling, advertising, marketing, promoting, selling, and distributing motor vehicles.

### **BACKGROUND**

11. Toyota manufactures, assembles, advertises, markets, promotes, sells, and distributes motor vehicles nationally and in the State of Tennessee.

12. Since the formation of Toyota Motor Sales, USA, Inc., on October 31, 1957, Toyota has manufactured, assembled, advertised, marketed, promoted, sold, and distributed millions of vehicles in the United States. Defendants, from January 1, 2003 through January 30, 2010, consistently represented in advertising and public statements that Toyota vehicles were safe and reliable transportation.

13. In 2011, Toyota Motor Sales reported that Toyota sold 1,644,661 vehicles in the United States.

### **UNINTENDED ACCELERATION**

14. According to the National Highway Traffic Safety Administration (hereinafter referred to as “NHTSA”), the federal agency primarily responsible for maintaining motor vehicle

safety in the United States, unintended acceleration generally “refers to the occurrence of any degree of acceleration that the vehicle driver did not purposely cause to occur.”

15. Recent government studies into the possible causes of unintended acceleration in all vehicles, including Toyota vehicles, indicate that driver error (through pedal misapplication), and mechanical issues (such as “floor mat entrapment” of the accelerator pedal and the “sticky pedal” phenomenon) are the primary causes of reports of unintended acceleration.

### **TOYOTA RECALLS OF 2009 AND 2010**

16. Reports of unintended acceleration in Toyota vehicles first prompted NHTSA investigations in 2003.

17. Between July, 2003 and April, 2009, NHTSA opened eight separate unintended acceleration-related investigations into Toyota vehicles.

18. One of the above-referenced NHTSA investigations resulted in a voluntary *equipment recall* of 55,000 all-weather floor mats for Lexus vehicles (“floor mat entrapment” recall, NHTSA campaign no. 09V-388). NHTSA determined that if the all-weather floor mats were not installed correctly, the floor mat may interfere with, or entrap, the accelerator pedal, causing a condition called “wide open throttle” – where the vehicle could potentially accelerate uncontrollably.

19. As a result of a separate NHTSA investigation conducted in January, 2009, Toyota agreed to voluntarily recall 26,501 of the 2004 Model Year Sienna minivans to replace a retention clip and floor carpet cover in or near the Sienna’s center console trim panel (the Sienna “Safety Improvement Campaign,” NHTSA campaign no. 09V-023). Prior to the recall, the

design of the center console and a missing retention clip could have resulted in accelerator “pedal interference” – which could have caused instances of unintended acceleration.

20. In August, 2009, a tragic and fatal crash killed four members of the Saylor family in Santee, California. According to a NHTSA report on the crash, 911 calls, and the subsequent investigation by local law enforcement and NHTSA, the crash was likely caused when an improperly installed floor mat in the Lexus vehicle the Saylor family were driving entrapped the accelerator pedal. California Highway Patrol Officer Mark Saylor, the driver of the Saylor vehicle, and a highly trained and experienced driver, used his best efforts to slow the vehicle, but was unsuccessful. The floor mat entrapment, in conjunction with a push-button start ignition system in the vehicle, made stopping the vehicle impossible, despite obvious application of the brakes by Officer Saylor.

21. Soon after the Saylor crash, on September 29, 2009, Toyota issued a consumer advisory regarding the potential floor mat entrapment of the accelerator pedal.

22. At NHTSA’s request, on October 5, 2009, Toyota informed NHTSA that the company would recall affected vehicles to address the potential floor mat entrapment safety issue.

23. On November 2, 2009, Toyota announced that it would recall 3.8 million vehicles worldwide to address the floor mat entrapment safety concern 09V-388 (“floor mat entrapment” safety campaign; Toyota Recall No. 90L/9LG).

24. After reports surfaced that floor mat entrapment may not be the only mechanical cause of unintended acceleration in certain Toyota vehicles, on January 21, 2010, Toyota announced an additional recall of 2.3 million vehicles worldwide to address “sticky pedal” safety issues (“sticky pedal” recall, NHTSA campaign no. 10V-017). Essentially, when drivers of

some affected vehicles depressed the accelerator pedal, that accelerator pedal would “stick,” making the vehicle slow to return to idle, or difficult to slow down.

25. On January 27, 2010, Toyota expanded the November, 2009 floor mat entrapment recalls to include additional models (“floor mat entrapment” recall, NHTSA campaign no. 10V-023).

26. The number of vehicles affected by the pedal entrapment and “sticky pedal” recalls totaled nearly 6 million vehicles in the United States alone.

### **NHTSA’S TIMELINESS QUERIES**

27. On February 16, 2010, NHTSA announced publicly that they would use their statutory authority to open timeliness queries to determine if Toyota had notified NHTSA of safety defects and carried out safety campaigns in a timely manner.

28. On April 5, 2010, NHTSA announced they would demand that Toyota pay the statutory maximum fine of \$16.375 million for failure to timely notify NHTSA of the “sticky pedal” defect. Although federal law requires automakers, including Toyota, to notify NHTSA within five days of learning of a potential safety defect, Toyota waited for nearly four months prior to notifying NHTSA.

29. According to NHTSA, Toyota knew of the “sticky pedal” safety defect on September 29, 2009, if not before, when it notified distributors in thirty-one European countries and Canada of the potential issue and provided repair procedures to address the issue. Despite having knowledge that consumers in the United States were experiencing the same phenomena, Toyota waited until January, 2010, to notify NHTSA of the “sticky pedal” issue and begin the recall process in the United States.

30. On December 20, 2010, NHTSA announced they would demand Toyota pay a second statutory maximum fine of \$16.375 million for the failure to timely notify the agency of the dangers of floor mat entrapment in certain Toyota and Lexus model vehicles.

31. According to NHTSA, Toyota at least became aware of the dangers of floor mat entrapment of the accelerator pedal on September 26, 2007, if not before, when it initially recalled 55,000 all-weather floor mats to address entrapment issues in certain Lexus models.

32. On December 20, 2010, NHTSA announced that Toyota faced a third statutory maximum penalty of \$16.050 million for failure to timely notify the agency of a safety defect that Toyota found and addressed in certain model trucks sold in Japan in 2004, which could result in a loss of steering control. Despite Toyota's 2004 recall in Japan to fix steering relay rods in the Hilux trucks that were prone to failure, Toyota failed to notify NHTSA that consumers in the United States had filed similar complaints regarding equivalent models of the Hilux trucks sold in the United States. Although Toyota notified NHTSA in 2005 of a voluntary recall of 1 million United States model trucks to address the same steering relay rod issue, NHTSA did not learn of the complaints from consumers in the United States until 2010.

### **THE "SLATER PANEL" REPORT**

33. Shortly after the massive recalls of 2009 and 2010, and the announcement of one of NHTSA's record-setting fines against Toyota, Toyota announced the creation of the "Toyota North American Quality Advisory Panel" (hereinafter "Panel"). On April 29, 2010, Toyota announced the Panel members and indicated that the Panel would be chaired by Rodney Slater, who was the United States Secretary of Transportation from 1997 through 2001.

34. Toyota tasked the Panel to conduct an independent review of Toyota's safety and quality processes and to review the company's management structure.

35. According to the Panel, Toyota granted Panel members full cooperation and was responsive to requests for information and assistance from Panel members.

36. In May, 2011, the Panel issued their report summarizing their findings upon completion of the first year of their two-year term.

37. The Slater Panel Report, as it became known, included several observations regarding Toyota's management structure and decision-making process that, in the Panel's view, may have contributed to the delay in identifying and resolving safety issues. To wit:

- a. Toyota's policy of "global centralization" – that is, maximizing control by TMC in Japan – "contributed to several of Toyota's quality and safety issues in North America." This "global centralization" policy hindered information-sharing and "delayed response time to quality and safety issues;"
- b. Toyota does not treat feedback from sources external to Toyota (such as consumer complaints or NHTSA concerns) in the same positive manner that it treats internal feedback; and
- c. Toyota conflates safety with quality, when these should be treated as separate qualities of a motor vehicle.

38. The Slater Panel Report also included several recommendations to improve Toyota's "safety and quality processes." According to the Panel, Toyota should

- a. Consider appointing one North American chief executive to oversee all North American operations;
- b. Include North American executives in decisions regarding product recalls;



- c. Strengthen communications and decision-making between regions;
- d. Seek out external feedback, including the creation of a “Consumer Representative Team” and integrate it into the decision-making processes;
- e. Work cooperatively with NHTSA and other regulators;
- f. Appoint a new “Chief Safety Technology Officer,” and
- g. Simplify the downloading and decoding of Electronic Data Recorder (“EDR”) data.

### VIOLATIONS OF LAW

#### **Tennessee Consumer Protection Act**

39. The State incorporates by reference and re-alleges each allegation contained in paragraphs 1-38.

40. All of the acts and practices engaged in and employed by the Defendants as alleged herein, are unfair or deceptive acts or practices affecting the conduct of any trade or commerce in Tennessee, which are declared unlawful by Tenn. Code Ann. § 47-18-104(a), (b)(7), (b)(21), and (b)(27). Specifically, Defendants:

- a. **Failed to warn of a known danger:** Defendants failed to disclose to consumers and regulators known safety risks associated with operation of Toyota motor vehicles and motor vehicle equipment;
- b. **Misrepresented safety and reliability:** Defendants misrepresented, directly or by implication, Toyota motor vehicles and motor vehicle equipment as safe and reliable;

- c. **Failed to perform consistent with contract obligations imposed by express and implied warranties:** Defendants failed to timely diagnose and repair Toyota motor vehicles and motor vehicle equipment that were the subject of consumer complaints related to sudden unintended acceleration as required pursuant to express and implied warranty representations and terms and as required by state warranty and Lemon Laws; and
- d. **Failed to share critical safety related information and decision making between Japan and North American Toyota officials:** Defendant TMC withheld safety related decision making authority and critical safety data, information, engineering/design changes and safety repairs from TMNA.

41. Each and every unfair or deceptive act or practice engaged in by Defendants, as recited above, constitutes a separate violation of the TCPA as provided by Tenn. Code Ann. § 47-18-104(a)-(b).

42. Because Defendants failed to reveal material facts regarding the motor vehicles sold to consumers nationwide, the Defendants have violated Tenn. Code Ann. § 47-18-104(a), (b)(7), (b)(21), and (b)(27) with each representation or omission.

### **REMEDIES**

1. Sections 47-18-108(a)(4)-(5) and (b)(3)-(4) of the TCPA, state in relevant part as follows:

(a)(4) The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part and such orders and injunctions shall be issued without bond.

(a)(5) Whenever any permanent injunction is issued by a court in connection with any action which has become final, reasonable costs shall be awarded to the state.

(b)(3) The court may also order payment to the state of a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

(b)(4) The court may also order reimbursement to the state for reasonable costs and expenses of investigation and prosecution of actions under this part, including attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, the State of Tennessee respectfully requests that this honorable Court enter an order:

A. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116 and no court costs or litigation fees or costs of any sort be taxed against the State pursuant to Tenn. Code Ann. § 47-18-116;

B. Issuing a permanent injunction prohibiting Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair, unconscionable, deceptive, or misleading conduct;

C. Ordering Defendants to implement all recommendations of the Slater Panel Report;

D. Ordering Defendants to pay civil penalties of up to \$1,000 U.S. Dollars for each violation of Tenn. Code Ann. § 47-18-104(a), (b)(7), (b)(21), and (b)(27), as provided by Tenn. Code Ann. § 47-18-108(b)(3);

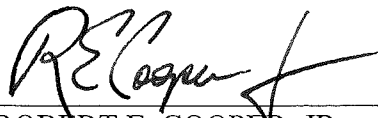
E. Ordering Defendants to pay all costs for the prosecution and investigation of this action, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4); and

F. Granting such other and further relief as the Court deems equitable and proper.

Dated February 14, 2013.

Respectfully submitted,

FOR THE STATE OF TENNESSEE



ROBERT E. COOPER, JR.  
Attorney General and Reporter  
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